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HIGHT COURT OF JUDICATURE CHHATTISHGARH : BILASPUR

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Single Bench : Hon'ble Shri S.R. NAYAK,

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Writ Petition NO. 2325 OF 2001

PETITIONER

Wahid Hussain,
S/o. Shri Shabbir Hussain,
Aged 31 years,
R/o. Bandhawapara,
Sarkanda, Bilaspur.

Versus

RESPONDENTS

1. State of Chhattisgarh,
Through Secretary, Deptt. Of
Home, D.K. Bhawan,
Raipur, (C.G.).
2. Chairman,
Probation Board of
Chattisgarh, Raipur.
3. Inspector General of Prisons,
Govt. of Chhattisgarh,
Raipur.
4. Collector,
Bilaspur.
5. Superintendent of Police,
Bilaspur.

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Present : Mr. Rajeev Shrivastava, learned counsel for the petitioner

Mr. Sanjay S. Agrawal, learned Govt. Advocate for the
State/Respondents.

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ORAL ORDER

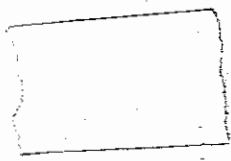
(Passed on 6th December, 2005)

The petitioner is convicted and sentenced to undergo life imprisonment for the offence punishable under section 302 of Indian Penal Code and rigorous imprisonment for 7 years for the offence punishable under Section 376 of the Indian Panel Code by the learned Sessions

Judge, Bilaspur in Session Trial No.379/1991. The appeal preferred against the said judgment, it is stated, is pending in this court in Cr. Appeal No.934/1993. It is stated that presently the petitioner has been on bail by virtue of orders passed by this court from time to time. When the matter stood thus, the petitioner moved an application for his release on licence under the provisions of M.P. Prisoners Release on Probation Act, 1954 (for short the 'Act') and his request has been rejected by the Probation Board by its order (Annex-2) dated Nil, but served on the petitioner on 06/09/2001. Being aggrieved by the said order, this writ petition is filed under Articles 226 and 227 of the Constitution of India.

(2) I have heard learned Counsel for the petitioner and the learned Government Advocate for State/Respondents.

(3) Shri. Rajeev Shrivastava, learned counsel for the petitioner would contend that the impugned order of the Probation Board is totally arbitrary inasmuch as notwithstanding the recommendations made by the District Collector and District Superintendent of Police to release the petitioner on licence, the Probation Board arbitrarily rejected his request. Per contra, Shri. Sanjay S. Agrawal would contend that the Probation Board is not bound by the recommendations of the District Magistrate or District Superintendent of Police and it can take its own decision on the basis of the materials resting with it. It is true that the Probation Board is not bound by the recommendation of the District Magistrate or District Superintendent of Police, but, at the same time it needs to be noticed that the Probation Board cannot act arbitrarily or unreasonably. Undoubtedly, the Probation Board can take a different view from the one taken by the



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District Magistrate of the District Superintendent of Police provided some other relevant materials rest with the Board to take such a decision. That is why this court pointedly asked the learned Government Advocate whether the Probation Board had any other relevant materials on the basis of which it had taken the decision not to release the petitioner on licence under the provisions of the Act and the learned Govt. Advocate would fairly submit that it had no other material to form a different opinion. Therefore, the reason given by the Probation Board that if the petitioner is released on license under the Act, he would harm the intimates of the jail, if I may say so, rests solely on the subjective satisfaction of the Probation Board and not on the objective considerations of any relevant materials.

(4) In that view of the matter, the Board's decision could not be assisted in law. In the result, the writ petition is allowed. The impugned order is quashed and the Probation Board is directed to reconsider the request of the petitioner for release on licence under the Act strictly in conformity with the provisions of the Act and in the light of the observations made in this order. The application of the petitioner should be disposed of as expeditiously as possible and at any rate within a period of three months from the date of receipt of a copy of this order.

Sd/-
Chief Justice

Brajesh